IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 23RD AUGUST 2006 / 1ST BHADRA 1928

WP(C).No. 32937 of 2004(U)

PETITIONERS:

1. TRACO CABLE CO.EMPLOYEES,
   UNION (CITU), IRIMPANAM, ERNAKULAM DISTRICT,
   REP. BY ITS SECRETARY.

2. BABURAJ T.P. GRADE III OPERATOR,
   TRACO CABLE COMPANY LIMITED, THDAYODI HOUSE,
   EDAYAKKUNNAM, SOUTH CHITTOOR P.O.

BY ADV. SRI.RAJESH NAIR
SRI.BIJOY CHANDRAN

RESPONDENTS:

1. TRACO CABLE COMPANY LIMITED
   (A KERALA GOVERNMENT COMPANY), REP. BY ITS
   MANAGING DIRECTOR, REGD.OFFICE, XXVIII/1242,
   KSHB, OFFICE COMPLEX, PANAMPILLY NAGAR P.B.NO.2404
   COCHIN- 682036.

2. THE KERALA PUBLIC SERVICE COMMISSION,
   REP. BY ITS SECRETARY, PATTOM,
   THIRUVANANTHAPURAM.

3. THE STATE OF KERALA, REP. BY THE
   SECRETARY TO GOVERNMENT, DEPARTMENT OF INDUSTRIES,
   GOVERNMENT OF KERALA, SECRETARIATE BUILDINGS,
   THIRUVANANTHAPURAM.

BY SRI.P.C. SASIDHARAN (SC, KPSC)
SR. GOVERNMENT PLEADER SRI.T.T.MUHAMOOD
ADV. SRI.RAMPRASAD UNNI, SC,TRACO CABLE LTD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/08/2006,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE NOTICE DATED 29.7.2004 ISSUED BY THE 1ST RESPONDENT.

EXT.P2: COPY OF THE LETTER DATED 9.8.2004 BY THE 1ST PETITIONER TO THE 1ST RESPONDENT.

EXT.P3: COPY OF THE COVERING LETTER DATED 9.8.2004 SENT TO THE DISTIRCT LABOUR OFFICER.

EXT.P4: COPY OF THE COUNTER AFFIDAVIT DATED 14.10.1997 FILED BY THE 1ST RESPONDENT.

RESPONDENTS EXHIBITS:

EXT.R1(a): COPY OF THE COMMUNICATION SHOWING NUMBER OF VACANCIES TO WHICH APPOINTMENTS ARE TO BE MADE UNDER CONSULTATION OF THE P.S.C.

EXT.R1(b): COPY OF THE RECRUITMENT NOTIFICATION.

EXT.R1(c): NOTE DTD. 6.9.2004 OF THE 1ST RESPONDENT.

EXT.R1(d): COPY OF THE RANK LIST PREPARED BY THE SELECTION COMMITTEE AND SUBMITTED TO THE MANAGING DIRECTOR DTD. 2.11.2004.

TRUE COPY

P.A.TO JUDGE

A.K.BASHEER,J

W.P.(C).No.32937 OF 2004

DATED THIS THE 23RD DAY OF AUGUST,2006

JUDGMENT

Petitioner No.1 is stated to be a registered Trade Union of the employees of Traco Cable Company Limited, which is a company owned by the Government of Kerala. Petitioner No.2 is an employee in the said company and a member of the Trade Union mentioned above. Petitioner's grievance is that the company is trying to fill up the vacant post of Record Keeper in the company without referring the above vacancy to the Kerala Public Service Commission. It is contended that the said vacancy can be filled up only in consultation with the Commission and as provided in Rule 2 (a) of the Kerala Public Service Commission (Consultation by Corporations and Companies) Rules, 1971. There is a further prayer in the Writ Petition to issue a writ of mandamus or such other appropriate Writ or direction to the company to take steps to comply with the statutory mandate of reservation of employment to persons belonging to Scheduled Caste and Scheduled Tribes and also to those who come within the purview of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

2. In response to the contention raised in the Writ Petition it is averred by the company in its counter affidavit that the vacancy was notified on the notice board of the company since the selection was confined to internal candidates of the company only. It is further contended that the post of Record Keeper comes under the "worker" category. Appointment to the posts coming under the worker category as well as under the supervisory or managerial staff category have been excluded from the purview of the Kerala Public Service Commission (Additional Functions as Respects Certain Corporations and Companies) Act, 1970 and the rules thereunder. Therefore, recruitment to such posts need not be referred to the Commission. Ext.R1(b) is stated to the communication issued to the Government in this regard. It is also stated in the affidavit that the posts to which recruitment has to be made through the Commission have been indicated in Ext.R1(a). Internal appointment had been made even in the past. None of the employees or their Unions had raised any objection to recruitment from among the internal candidates to certain posts coming under the worker category on earlier occasions. It is specifically contended by the company that the proposed appointment to the post of Record Keeper was also sought to be done in a transparent manner. A notification in this regard was published on the notice board of the company and all eligible candidates were invited to

submit their applications. A committee comprising the officers indicated in Ext.R1(c) was also constituted for the said purpose to scrutinize the applications and conduct the interview and recommend the names of suitable candidates . Accordingly R1(d) list was prepared by the committee and submitted before the Managing Director. However, no appointment could be made in view of the interim order passed by this court in the writ petition.

3. It is revealed from the additional counter affidavit filed by the company that even in the past, appointment to the post of Record Keeper was made from among eligible candidates in the company itself. Accordingly, Mr.C.L.Francis, who was working as peon was promoted. He had retired from service in June 2000 as Record Keeper. The company had wanted to fill up the existing vacancy of Record Keeper from among the eligible internal candidates. No reply affidavit has been filed by the petitioners controverting the assertions made by the company in the two counter affidavit. It has not been brought to my notice that the post of Record Keeper would not come within the category of worker. Ext.R1(b) undoubtedly shows that recruitment to the category of worker need not be referred to the Commission. Nothing has been produced to show that Ext.R1(b) had not come into force.

4. There is also considerable force in the contention raised by the company that the Writ Petition has been filed without any bona fides. It has not been pointed out how the petitioners would be prejudicially affected by the selection process, since the beneficiary of the recruitment will be one of the employees working in the company. Petitioner No.2 who is an employee in the company has no case that he had either applied for the post or that his claim for appointment was rejected.

5. As regards the prayer for a direction to the company to reserve sufficient number of posts for physically handicapped candidates, as contemplated under Act 1995, it is made clear that it would be open to the petitioner, if so advised to take up the matter with the company at the appropriate time if the statutory mandate in the said Act is not being complied with. Anyhow, it shall be ensured by the company that provisions contained in the Act are properly complied with and adequate number of suitable posts are ear-marked for the disabled persons.

The writ petition is dismissed with the above direction/observations.

A.K.BASHEER,JUDGE

dvs